

Message Text

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ACTION SS-15

INFO OCT-01 NEA-10 ISO-00 MC-02 PM-04 L-03 DODE-00 EB-07

NRC-05 NSAE-00 TRSE-00 ERDA-05 CIAE-00 COME-00 AID-05

ACDA-05 H-02 INR-07 NSC-05 PA-01 PRS-01 SP-02 USIA-06

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC PRIORITY 2256

C O N F I D E N T I A L NEW DELHI 15215

E.O. 11652: GDS

TAGS: MASS

SUBJECT: MUNITIONS CONTROLS AND AGENTS FEES

REF: STATE 255260

1. REFTEL PROVIDED BACKGROUND INFORMATION CONCERNING STATE-DEFENSE DEPARTMENT ACTIONS TAKEN OR CONTEMPLATED RELATIVE TO MUNITIONS CONTROL AND AGENTS FEES, AND REQUESTED REACTION OF AMBASSADOR TO STEPS THAT MIGHT BE TAKEN IN DEALING WITH THE AGENTS FEE QUESTION.

2. THE RECENTLY ALTERED PROVISIONS OF THE ARMED SERVICES PROCUREMENT REGULATION (ASPR) COVERING AGENTS FEES ARE CONSIDERED SOUND AND EQUITABLE TO ALL CATEGORIES OF AGENTS INVOLVED IN FOREIGN MILITARY SALES (FMS). WE QUESTION THE ADVISABILITY OF REQUESTING THE FOLLOWING STATEMENT TO BE MADE IN AN APPENDED NOTE TO THE LETTER OF OFFER: "DOD OFFICIALS CONSIDER THE FEE TO BE FAIR AND REASONABLE." THE DOLLAR VALUE OF THE INITIAL PURCHASE VISIBLE TO THE DOD OFFICIAL AND POSSIBLE SUBSEQUENT FOLLOW-ON PURCHASES FOR REPLACEMENT/REPAIR PARTS MAY HAVE AN IMPACT ON THE TOTAL AGENTS FEES EARNED AND BEING PAID. INITIALLY, THE DOD OFFICIAL WOULD NOT KNOW THE VALUE OF THE ADD-ON PURCHASES FOR REPLACEMENT/

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REPAIR PARTS. WHERE THE FEE MAY BE PAID ON AN ESTABLISHED

PERCENTAGE OF TOTAL SALES PRICE, ANY BONUS FOR EXCEPTIONAL SERVICES BECAUSE OF TECHNICAL WORK INVOLVED MAY APPEAR DISPROPORTIONATELY HIGH TO THE DOD OFFICIAL. THE DOD OFFICIAL TASKED WITH MAKING THE ASSESSMENT COULD NOT MAKE A PROPER VALUATION UNLESS HE WAS PRIVILEGED TO KNOW THE ENTIRE BUSINESS PROCESS AND TECHNICAL WORK INVOLVED IN EFFECTING THE SALE. THE SUBMISSION OF SUCH A STATEMENT TO THE PURCHASING GOVERNMENT COULD BE USED TO THE DETRIMENT OF THE AMERICAN SELLER IN SUBSEQUENT DEALINGS OR LEGAL MATTERS. THE DETERMINATION OF ADEQUACY OF FEES SHOULD BE MADE BY THE PURCHASING COUNTRY AND COMMERCIAL COMPANY INVOLVED.

3. THE SCOPE OF FMS WITH THE GOI MINISTRY OF DEFENCE (MOD) IS STILL LIMITED BECAUSE OF THE ARMS EMBARGO TO THE SUB-CONTINENT, WHICH WAS ONLY RECENTLY MODIFIED TO PERMIT SALES ON A CASE-BY-CASE BASIS. THE PROBLEM OF AGENTS FEES HAS NOT BEEN AN ISSUE IN FMS IN INDIA. FMS CASES ARE INITIALLY NEGOTIATED, IN MOST CASES, DIRECTLY BETWEEN USG MILITARY AND GOI MINISTRY OF DEFENCE REPRESENTATIVES. SUBSEQUENTLY, THE DOD LETTER OF OFFER AND ACCEPTANCE (DD FORM 1513) IS COMPLETED IN WASHINGTON BETWEEN USG OFFICIALS AND GOI EMBASSY REPRESENTATIVES. HOWEVER, IF AN FMS CASE DEVELOPED WHEREIN AN AGENTS FEE BECAME AN ISSUE, THE US MILITARY REPRESENTATIVE IN INDIA WOULD REFER THE MATTER TO DOD, INTERNATIONAL SECURITY AFFAIRS, FOR RESOLUTION.

4. IN REGARD TO FOREIGN MILITARY CREDIT SALES, AN "OFF-THE-RECORD" DISCUSSION WITH A HIGH-LEVEL MINISTRY OF DEFENCE OFFICIAL WAS LIMITED, AT HIS REQUEST, TO CONTRACTS BETWEEN U.S. CONTRACTORS AND THE GOI. GOI COMMERCE REGULATIONS REQUIRE THAT AN INDIAN "CONCESSIONAIRE" BE RETAINED TO ASSIST THE CONTRACTOR IN THE PROPER EXECUTION OF THEIR CONTRACTUAL OBLIGATIONS. HE (THE GOI OFFICIAL) REMARKED THAT "THIS IS THE PRICE ONE HAS TO PAY IN ORDER TO DO BUSINESS IN INDIA". A REVIEW OF CONTRACTS ON FILE IN EMBASSY BETWEEN GOI AND U.S. CONTRACTORS, WITH PAYMENT TO THE SUPPLIER AUTHORIZED UNDER DOD CREDIT SALES AGREEMENT PROCEDURES, INDICATES A RANGE OF AGENTS FEES BETWEEN 2 PERCENT-10 PERCENT. THE IDENTITY AND ADDRESS OF THE SOLE INDIAN DISTRIBUTOR AND/

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OR CONCESSIONAIRE IS CONTAINED IN THE CONTRACT. THE AGENTS COMMISSION (NORMALLY 2 PERCENT TO 2 AND 1/2 PERCENT OF THE TOTAL VALUE OF PRODUCT PROVIDED) SHALL BE PAID IN INDIAN RUPEES ON A MONTHLY BASIS. THE GOI SOURCE INDICATED THAT HIS COPIES OF THE CONTRACTS PROVIDED HIM WITH THE INFORMATION REGARDING AGENTS FEES PAID BY U.S. CONTRACTORS. HE INFERRED THAT THE PROCEDURES OF IDENTIFYING AND INDICATING THE AMOUNT OF AGENTS FEE CREATES "ADVERSE CONDITIONS" FOR THE U.S. FIRMS, BUT

REMARKED, "THAT IS THE PRICE THE U.S. FIRMS (SO GREATLY INVOLVED IN WORLD EXPORTS) MUST PAY FOR HONESTY". HE SAID ANY FURTHER INFORMATION AS TO PROCEDURES UTILIZED BY THE GOI IN THEIR DEALINGS WITH OTHER FOREIGN CONTRACTORS WOULD REQUIRE A FORMAL LETTER OF REQUEST TO THE GOI MINISTRY OF FINANCE.
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